

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.467 of 2019**

- Parsuram Sahu S/o Shri Sunder Lal Sahu Aged About 48 Years
R/o Village Amarikala, Tahsil Gurur, District Balod Chhattisgarh

---- **Petitioner****Versus**

1. Smt. Pujarani Sahu Aged About 25 Years R/o Village And Post Haldi, Tahsil Gunderdehi, District Balod Chhattisgarh
2. Smt. Sushila Bai W/o Ghanshyam Sahu Aged About 51 Years R/o Village Mokha, Post Rajoli, P. S. Ranchirai, Tahsil Gunderdehi, District Balod Chhattisgarh
3. Mahendra Kumar Sahu S/o Ghanshyam Sahu Aged About 28 Years R/o Village Mokha, Post Rajoli, P. S. Ranchirai, Tahsil Gunderdehi, District Balod Chhattisgarh
4. State Of Chhattisgarh Through District Magistrate, Balod, District Balod Chhattisgarh

---- **Respondents**

 For the Petitioner : Shri Praveen Dhurandhar, Advocate
 For Respondent No.4/State : Smt. Shubha Shrivastava, Panel
 Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

27.02.2019.

1. Heard on IA No.01/2019 for condonation of delay in filing the instant petition.
2. For the reasons mentioned in the application, the same is allowed and the delay of 127 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(4) of CrPC.
4. On due consideration, leave is granted.
5. This petition has been preferred against Order dated 01.8.2018 passed by Judicial Magistrate First Class, Balod Distt.

Balod (CG) in Complaint Case No.75/2017 wherein the complaint filed by the petitioner under Sections 192, 201, 379, 380, 406, 409, 410, 411 and 414 read with 34 of the Indian Penal Code, 1860 has been dismissed for want of prosecution.

6. As the appeal is nature of restoration of proceedings before the trial Court and the matter is not going to be decided on merits, presence of the respondent is not required.

7. It appears from the order sheet of the trial Court that the case was fixed for recording the evidence of the petitioner/complainant's witnesses and it was dismissed for single default. On that date, presence of the complainant was not compulsory.

8. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand** reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

Again, in the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the single default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.

9. Dismissal of the complaint was not the only option before the trial Court. It could have adjourned the case to some other date as per the provisions of Section 256(1) CrPC. The case should have been proceeded for recording the evidence of both sides and should have been decided on merits, but this was not done and the record was sent to record room without deciding issues between the parties and without providing opportunity to adduce evidence. Therefore, the order passed by the trial Court is not sustainable.

10. Accordingly, order passed by the trial Court is set aside allowing the petition. The trial Court is directed to proceed with the case in accordance with law and after providing opportunity of hearing to both sides and decide the issues on merits.

11. The petitioner to appear before the trial Court on **09.4.2019** for further proceedings.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**